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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2004 OCT 22 P 2:34

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

In the matter of:

DOCKET NO. S-03557A-04-0000

LONZO ARCHER, 1512 Plymouth Road  
N., Brunswick, NJ 08902; CRD No.  
1979672

Respondent.

**MOTION TO TAKE JUDICIAL NOTICE OF  
WASHINGTON STATE ORDER**

The Hearing Division of the Arizona Corporation Commission has the authority to take judicial notice of facts that are not subject to reasonable dispute because the facts are capable of accurate and ready determination by resorting to sources whose accuracy may not reasonable be questioned.

On January 27, 2004, the Securities Administrator for the State of Washington Department of Financial Institutions signed an *Entry of Finding of Fact and Conclusions of Law and Final Order Revoking Registration, Imposing Fine and Ordering Disgorgement* (Exhibit 1). The effect of the Order, among other things, was to permanently revoke Lonzo Archer's security salesperson's license.

Arizona Corporation Commission

**DOCKETED**

OCT 22 2004

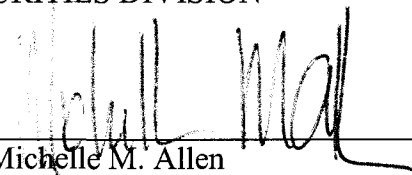
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CR

1 For these reasons, the Securities Division respectfully requests that the court take judicial  
2 notice of the Order from the State of Washington.

3 DATED this 22nd day of October, 2004.

4 ARIZONA CORPORATION COMMISSION  
5 SECURITIES DIVISION

6  
7 By   
Michelle M. Allen  
Attorney for Securities Division

8  
9 ORIGINAL of the foregoing  
10 FILED this 22<sup>nd</sup> day of  
October, 2004, with:

11 Docket Control  
12 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

13 COPY of the foregoing  
14 mailed/delivered this 22<sup>nd</sup> day of  
October, 2004, to:

15 Hon. Marc E. Stern  
Hearing Division  
16 Arizona Corporation Commission  
1200 West Washington Street  
17 Phoenix, Arizona 85007

18 Anthony Bingham  
Law Office of Anthony B. Bingham, P.C.  
19 1423 South Higley Road  
20 Building4, Suite 110  
Mesa, AZ 85206  
21 Attorney for Respondent

22 Michael Kalmus  
Michael Kalmus, P.C.  
23 850 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10022  
24 Attorney for Respondent

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26 By 

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STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

I certify that this is a true copy of  
a record on file in the Department  
of Financial Institutions of the  
State of Washington.

15 day of APRIL, 20 04  
Signature, Authorized Representative

IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Securities Act of Washington by:

LONZO ARCHER,

Respondent.

Order No. S-03-029-04-FO01

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL  
ORDER REVOKING REGISTRATION,  
IMPOSING FINE AND ORDERING  
DISGORGEMENT

THE STATE OF WASHINGTON TO:

Lonzo Archer, CRD #1979672  
655 Third Avenue, 14<sup>th</sup> Floor  
Room 1416-1420  
New York, NY 10017

INTRODUCTION

On December 19, 2003, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter an Order to Revoke Registrations, Impose Fines, Charge Costs, and Order Disgorgement order number S-03-029-03-SC01, hereinafter referred to as the "Statement of Charges", against Respondent Lonzo Archer. On December 29, 2003, the Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (hereinafter referred to as "Application for Hearing"), was served via certified mail on Lonzo Archer. The Notice of Opportunity for Hearing advised Lonzo Archer that he had twenty days from the date he received the notice to file a written application for an adjudicative hearing on the Statement of Charges. The Statement of Charges further advised that if Lonzo Archer did not request a hearing, the Securities Administrator intended to adopt the

ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF  
LAW AND FINAL ORDER REVOKING REGISTRATION,  
IMPOSING FINE AND ORDERING DISGORGEMENT

1

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 Tentative Findings of Fact and Conclusions of Law set forth in the Statement of Charges as final, revoke  
2 Lonzo Archer's registration, impose the fine sought, and order disgorgement.

3 Lonzo Archer failed to request an adjudicative hearing within twenty days of his receipt of the  
4 Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided  
5 or otherwise.

6 The Securities Administrator therefore adopts as final the findings of fact and conclusions of law  
7 as set forth in the Statement of Charges. The Securities Administrator finds as follows:

### 8 FINDINGS OF FACT

#### 9 RESPONDENT

10 1. Lonzo Archer ("Archer") is a securities salesperson with First Montauk Securities Corp.  
11 ("First Montauk Securities") and has been employed there since August 2002. He has been registered as  
12 a securities salesperson with the Washington State Securities Division since February 2001, and was  
13 previously so registered from February 1994 to April 1998. Archer was employed by Mantis Securities,  
14 Inc. ("Mantis Securities") as a securities salesperson from September 2000 to August 2002.<sup>1</sup> Prior to  
15 that, Archer was employed as a securities salesperson for fourteen different broker-dealers in eleven  
16 years, including Northridge Capital Corporation from August 1999 to August 2000, G.F.B. Securities,  
17 Inc. from March 1998 to August 1999, William Scott & Co. L.L.C from December 1996 to March 1998,  
18 Rickel & Associates, Inc. from February 1996 to December 1996, FAB Securities of America, Inc. from  
19 May 1995 to February 1996, Global Equities Group Inc. from April 1995 to May 1995, A.T. Brod & Co.  
20 Inc. from June 1994 to March 1995, S.D. Cohn & Co., Inc. from February 1994 to June 1994, Westfield

1 Financial Corporation from June 1993 to February 1994, LCP Capital Corp. from October 1992 to  
2 January 1993, Prudential Equity Group, Inc. from February 1992 to October 1992, GKN Securities Corp.  
3 from January 1991 to March 1991, R.H. Damon & Co., Inc. from April 1990 to January 1991, and  
4 Barrett Day Securities, Inc. from August 1989 to January 1990. Archer currently resides in New  
5 Brunswick, New Jersey.

### 6 NATURE OF RESPONDENT'S CONDUCT

7 2. Burt S. and Virginia S.<sup>2</sup> ("Burt and Virginia") are Washington residents, ages sixty-six and  
8 fifty-seven, respectively.

9 3. Burt received an unsolicited telephone call from Lonzo Archer ("Archer") of Mantis  
10 Securities in approximately February of 2001. Archer offered his services as a securities salesperson.  
11 Burt was initially not interested in opening an account with Archer. Archer then mentioned a number of  
12 stocks he was recommending and asked Burt to track their performance. Archer phoned Burt again  
13 several times over the next few months to ask if he had followed the stocks, which had performed well.  
14 Because the stocks Archer had told Burt to track had done well, Burt gained confidence in Archer's  
15 ability to manage his investments. Burt decided to open an account with Mantis Securities and signed a  
16 new account application in May 2001. Burt transferred a Roth individual retirement account (IRA)  
17 account, hereinafter referred to as Account I, worth approximately \$42,000 to Mantis Securities in June  
18 2001.

19 4. Burt and Virginia have minimal investment experience. Burt and Virginia had never  
20

21 <sup>1</sup> Mantis Securities withdrew their broker-dealer registration in the state of Washington on or about September 30, 2002.

22 <sup>2</sup> The full names of the customers are omitted to protect their privacy.

1 directed their own investments until 1998. At that time, they purchased a few stocks, which they later  
2 sold during the market correction of 2000. The bulk of their assets continued to be held in retirement  
3 accounts that were not self-directed. Burt and Virginia's main investment objective was to supplement  
4 their retirement savings. Speculation was not one of their investment objectives.

5 5. Upon opening the account, Archer agreed to obtain Burt's authorization prior to making  
6 trades. Burt received his first trade confirmation in the mail from Mantis Securities in June of 2001, a  
7 purchase of 3,000 shares of Mim Corp., a small-capitalization stock. Archer had not contacted Burt prior  
8 to making the trade. Burt called Archer for an explanation. Archer explained that the market moved too  
9 quickly to call about every trade. Subsequent to this conversation, Archer continued to make trades  
10 without contacting Burt. In fact, Archer never contacted Burt prior to the purchase or sale of securities.  
11 Burt would learn about the transactions through receipt of the trade confirmations in the mail from  
12 Mantis Securities. If he wanted to speak with Archer to discuss his account, Burt had to initiate the  
13 phone call.

14 6. From June 2001 to March 2002, Burt believed Archer's trading was profitable, as the value  
15 of Account I had doubled. As a result, Burt and Virginia decided to transfer two of Virginia's accounts  
16 to Mantis Securities. In March of 2002, they transferred a Roth IRA account of Virginia's, hereinafter  
17 referred to as Account II, worth approximately \$100,000. In April of 2002, they also transferred a  
18 Rollover IRA account of Virginia's, hereinafter referred to as Account III, worth approximately \$97,000.  
19 Archer made trades in Virginia's accounts without contacting her. In fact, Virginia never spoke with  
20 Archer.

21 7. At the time all three accounts had been transferred to Mantis Securities, Burt and Virginia's  
22 annual income was approximately \$50,000 per year. The accounts represented over a quarter of their net

1 worth.

2 8. From June 1999 through September 2002, Archer bought approximately \$500,000 worth of  
3 securities in Account I. From April 2002 through September 2002, Archer purchased approximately  
4 \$91,000 worth of securities in Account II, and \$57,000 worth of securities in Account III. All of the  
5 securities purchased by Archer were stocks. Further, virtually all the stocks purchased were low priced  
6 small capitalization ("small cap") stocks.<sup>3</sup> Investing in small-cap stocks involves substantial risk. Small-  
7 cap stocks are companies that are usually less established and lack financial resources, so their stock  
8 price tends to be highly volatile. By Archer's own admission, the companies he was recommending to  
9 Burt and Virginia were "speculative and growth oriented."

10 9. From May 3, 2002 through May 28, 2002, Burt and Virginia were in Europe on vacation.  
11 During this time period, they could not be contacted by telephone and in fact had no contact with Archer.  
12 Archer made over a dozen trades during this time period.

13 10. As described above, Archer engaged in a heavy volume of trading in all three of Burt and  
14 Virginia's accounts. Archer held most of the stocks he purchased in the accounts for only a few weeks or  
15 months before selling them in order to purchase new stocks. This volume of trading generated excessive  
16 commissions given the size of the accounts. From June 1999 to September 2002, Burt and Virginia paid  
17 over \$35,000 in commissions for their three accounts. Simply to meet the expenses of maintaining the  
18 account, Account I needed to produce an investment return of over 40%.<sup>4</sup>

19 11. Archer left Mantis Securities and became employed by First Montauk Securities in August  
20

21 <sup>3</sup> For purposes of this Statement of Charges, a small-cap stock is defined as a stock with a market capitalization (number of shares outstanding multiplied by stock  
22 price) of \$500 million or less.

1 of 2002. Burt and Virginia transferred their accounts to First Montauk Securities in early September  
2 2002. Around this same time period, Burt and Virginia became extremely concerned about their  
3 accounts, which had been rapidly declining in value over the last several months. Burt and Virginia were  
4 especially concerned about Archer's excessive purchases of two small-cap stocks, Eagle Supply Group  
5 Inc. and Advanced Environmental Recycling Technologies Inc. Beginning in February 2002 and  
6 continuing through July 2002, Archer purchased a collective total of close to 50,000 shares of Eagle  
7 Supply Group Inc. for close to \$150,000 in their three accounts. In March and April 2002, Archer  
8 purchased a collective total of 14,500 shares of Advanced Environmental Recycling Technologies Inc.  
9 for close to \$34,000 in their three accounts. At the time of these purchases, both stocks were trading for  
10 between \$2 and \$4 per share.

11 12. Burt and Virginia decided to terminate their association with Archer and sent him a letter  
12 dated October 1, 2002 asking him to cease trading. Burt and Virginia's accounts were then transferred to  
13 J.B. Oxford & Company, the clearing brokerage firm for Mantis Securities. Burt directed all further  
14 trading from this point forward. Burt and Virginia attempted to mitigate their losses by selling the  
15 securities that Archer had purchased in their accounts. Burt and Virginia sold all the stock purchased by  
16 Archer within a few months.

17 13. In addition to the \$35,000 in commissions they paid, Burt and Virginia also suffered  
18 substantial losses in value during the short time period in which Archer controlled their accounts.  
19 Account I lost approximately \$1,300, Account II lost approximately \$51,000, and Account III lost  
20

21 <sup>4</sup> This return is calculated by dividing the commissions, margin interest, and other expenses paid by the average net equity of the account.  
22



1 approximately \$66,000. Collectively, these losses account for approximately 54% of the funds Burt and  
2 Virginia entrusted to Archer.

3 Based upon the above Findings of Fact, the following Conclusions of Law are made:

#### 4 CONCLUSIONS OF LAW

5 1. The offer and/or sale of the stocks described above constitutes the offer and/or sale of a  
6 security as defined in RCW 21.20.005(10) and (12).

7 2. Lonzo Archer, as described above, has willfully violated RCW 21.20.702 by  
8 recommending the purchase and sale of securities to Burt and Virginia S. without reasonable grounds to  
9 believe that the transactions were suitable for them. Such practice is grounds for the revocation of his  
10 salesperson registration pursuant to RCW 21.20.110(1)(b), and for the imposition of fines pursuant to  
11 RCW 21.20.110(1).

12 3. Lonzo Archer, as described above, has willfully violated RCW 21.20.035 by knowingly  
13 effecting transactions in the accounts of Burt and Virginia S. that were excessive in size and frequency in  
14 view of the financial resources and character of the accounts, and that were effected by reason of Burt  
15 and Virginia S.'s trust and confidence in Archer. Such practice is grounds for the revocation of his  
16 salesperson registration pursuant to RCW 21.20.110(1)(b), and for the imposition of fines pursuant to  
17 RCW 21.20.110(1).

18 4. Lonzo Archer, as described above, engaged in one or more dishonest and unethical  
19 practices in the securities business, as defined by WAC 460-22B-090(6), by inducing trades in the  
20 accounts of Burt and Virginia S. that were excessive in size and frequency in view of the financial  
21 resources and character of the accounts. Such practice is grounds for the revocation of his salesperson  
22

1 registration pursuant to RCW 21.20.110(1)(g), and for the imposition of fines pursuant to RCW  
2 21.20.110(1).

3 5. Lonzo Archer, as described above, engaged in one or more dishonest or unethical practices  
4 in the securities business, as defined by WAC 460-22B-090(9), by exercising discretionary power in  
5 effecting transactions for the accounts of Burt and Virginia S. without first obtaining written  
6 discretionary authority from them. Such practice is grounds for the revocation of his salesperson  
7 registration pursuant to RCW 21.20.110(1)(g), and for the imposition of fines pursuant to RCW  
8 21.20.110(1).

9 **FINAL ORDER**

10 Based on the forgoing, NOW, THEREFORE IS HEREBY ORDERED that Lonzo Archer's  
11 securities salesperson license shall be permanently revoked from the date of entry of this Order.

12 IT IS FURTHER ORDERED that, pursuant to RCW 21.20.110, Lonzo Archer shall pay a fine in the  
13 amount of \$20,000. Such payment shall be: (a) made by United States postal money order, certified check,  
14 bank cashier's check or bank money order; (b) made payable to the Washington State Treasurer; (c)  
15 delivered by certified mail to Deborah R. Bortner, Securities Administrator, Department of Financial  
16 Institutions, PO Box 9033, Olympia, Washington 98507-9033; and (d) submitted with a cover letter that  
17 identifies Lonzo Archer as a Respondent under these proceedings, and the Order number of these  
18 proceedings.

19 IT IS FURTHER ORDERED that, pursuant to RCW 21.20.110, Lonzo Archer shall pay  
20 disgorgement in the amount of \$35,000. Such payment shall be: (a) made by United States postal money  
21 order, certified check, bank cashier's check or bank money order; (b) made payable to the Washington State  
22 Treasurer; (c) delivered by certified mail to Deborah R. Bortner, Securities Administrator, Department of

1 Financial Institutions, PO Box 9033, Olympia, Washington 98507-9033; and (d) submitted with a cover  
2 letter that identifies Lonzo Archer as a Respondent under these proceedings, and the Order number of these  
3 proceedings.

#### 4 AUTHORITY AND PROCEDURE

5 This Order is entered pursuant to the provisions of RCW 21.20.110, and is subject to the  
6 provisions of RCW 21.20.120 and Chapter 34.05 RCW. Pursuant to RCW 21.20.110, a certified copy of  
7 this order may be filed in Superior Court. If so filed, the clerk shall treat the order in the same manner as  
8 a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like  
9 manner.

10 DATED this 27<sup>th</sup> day of January, 2004.



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14 Approved by:

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16  
17 Michael E. Stevenson

18 Michael E. Stevenson  
Chief of Enforcement

19  
20  
21  
22 Deborah R. Bortner

23 DEBORAH R. BORTNER  
Securities Administrator

24 Presented by:

25  
Chad C. Standifer

Chad C. Standifer  
Staff Attorney